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Supreme Court, U.S.
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No. 06-581

IN THE
Supreme Court of the United States

ALLEGRETTI & COMPANY,

Petitioner,

v.

COUNTY OF IMPERIAL, CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION ONE

AMICUS CURIAE BRIEF OF THE WESTERN MANUFACTURED HOME ASSOCIATION ("WMA") IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI FILED BY ALLEGRETTI & COMPANY

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I. THE WESTERN MANUFACTURED HOME ASSOCIATION ("WMA") IS AN ORGANIZATION COMPRISED OF THE OWNERS OF MOBILE-HOME PARKS THROUGHOUT CALIFORNIA, AS WELL AS OTHER WESTERN STATES.

WMA is a trade association whose members are largely Mobilehome Park Owners who, collectively, own, operate and control over 175,000 mobilehome spaces in California alone. WMA has over 1800 member parks. WMA provides services for its members and participates, on an intermittent basis, as amicus in litigation that may have a substantial impact upon the mobilehome park industry. Attached as Appendix A is a true and correct copy of the letter from Petitioner and Respondent setting further their consent to this amicus brief being filed.

WMA respectfully requests and suggests that this court should grant the Petition for Writ of Certiorari in the above-referenced matter. Review should be granted because the issues raised in the Petition involving the Fifth and Fourteenth Amendments of the United States Constitution are ripe for review and are virtually identical to takings issue that are arising on literally an every day basis in the mobilehome park industry. WMA's interest in this matter is limited to the second question presented for review. The issue of regulatory takings occurs with an alarming frequency, in the context of mobilehome park regulations in California and other jurisdictions.[1] By granting review this Court can bring some clarity to takings issues that are vexing problems for property owners throughout California and elsewhere.

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1. The undersigned, as counsel for WMA, the Amicus Curiae, have prepared this brief in whole and no person or entity, other than WMA, has made a monetary contribution to the preparation of this Amicus brief.

II. THE INTERSECTION OF WHEN LEGISLATIVE REGULATION OF AN INDUSTRY, SUCH AS THE MOBILEHOME PARK INDUSTRY, HAS REACHED THE POINT OF CAUSING A BURDEN SO AS TO HAVE RESULTED IN A TAKING UNDER THE FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION NEEDS RESOLUTION AND GUIDANCE BY THIS COURT.

Guidance by this court on the question of how a claim of regulatory taking should be analyzed under *Penn Central Transportation Company v. City of New York*, 438 U.S. 104 (1978) is crucial.

Over 100 communities in California alone have adopted some form of mobilehome park rent control. Mobilehome Park Rent Control legislation has, in turn, led to ongoing litigation in California's courts as well as the Federal Courts located in California arising out of the adoption and enforcement of mobilehome park rent control.

By way of example, the following cases represent just a small sample of recently decided state and federal court cases where mobilehome rent control was a central issue. The following list reflects only published opinions. In California the intermediate courts of appeal publish only a small percentage of cases decided and the volume of unpublished cases from California's courts of appeal is actually much higher. In each of the following cases, issues about regulatory takings under the United States Constitution were ultimately at issue.

• *Los Altos El Granada Investors v. City of Capitola* (2006) 139 Cal. App. 4th 629.

• *Hacienda Valley Mobile Estates v. City of Morgan Hill*, 353 F.3d 651 (9th Cir. 2003).

• *Montclair Park Owners Ass'n. v. City of Montclair*, 264 F.3d 829 (2001).

• *Carson Gardens, LLC v. City of Carson Mobilehome Park Rental Review Board* (2006) 135 Cal. App. 4th 856.

• *Rainbow Disposal Co. v. Escondido Mobilehome Park Rental Review Board* (1998) 64 Cal. App. 4th 1159.

• *City of Cotati v. Cashman* (2002) 29 Cal. 4th 69.

The foregoing list does not include the *Kavanau v. City of Santa Monica Rent Control Board* (1997) 16 Cal.4th 761, and *Galland v. City of Clovis* (2001) 24 Cal.4th 1003 decisions which are rent control cases about takings claims decided by the California Supreme Court.

The Petition for Certiorari filed by Allegretti is singularly appropriate for this Court to accept and address unanswered questions concerning application of this Court's Fifth Amendment cases on regulatory takings because the instant Petition properly raises two (2) preeminent questions that need resolution. First, the Petition for Certiorari properly raises how the phrase "reasonable investment back expectations" should be analyzed by trial courts that are called upon to decide if a taking has occurred under this Court's *Penn-Central* standard (*Penn Central Transportation Co. v. City of New York* (1978) 438 U.S. 104). There is an alarming absence of guidance from this Court on that issue. The recent *Lingle v. Chevron USA, Inc.* (2005) 544 U.S. 528 decision answered one question about regulatory takings. However, the *Lingle* case, by its very ruling, means that the probability of cases proceeding to trial based upon the *Penn-Central* test increases dramatically.

Second, the Certiorari Petition filed by Allegretti pointedly raises the question that can only be answered by this Court: how trial courts should evaluate whether a regulatory taking has taken place when there remains some economically viable use of the land. In the Allegretti Petition, the landowner/farmer is able to use (farm) approximately one-third of the available land due to the governmental action. And the means of imposing

that limit on land owners pushes the very edge of what regulatory power is properly vested in the County. In rent control situations, the factual situations that arise are very similar. A mobilehome park owner is able to collect some rent and therefore the property does have some economic value. But the economic ability to earn a fair return based on the entirety of the property has been so dramatically cut that the question of when or if the regulation has gone "too far" so as to become a taking, is an ongoing and recurring theme.

The California Supreme Court's decisions in *Kavanau* and *Galland (supra)*, both enunciate the principle that a taking can occur under the California Constitution and the United States Constitution even though there remains some economically viable use of the property. The Certiorari Petition filed by Allegretti should be granted so that those two separate, but interrelated questions can be analyzed by this Court, and so this Court can provide guidance to trial courts and Appellate Courts throughout the Country.

The necessity for this Court to grant the Certiorari Petition of Allegretti is especially relevant in late 2006. In 2005, this Court decided a triumvirate of cases involving Fifth Amendment claims. Two (2) of those decisions have substantial impact on why this Certiorari Petition should be granted. *The Lingle v. Chevron USA, Inc (supra)* decision, discussed briefly above, concluded that the "substantial advancement" test was not an appropriate means of analyzing whether a taking under the Fifth Amendment has occurred. The *Lingle* court strongly confirmed that regulatory takings should be analyzed pursuant to the multi-factor test set forth in *Penn-Central*. The Certiorari Petition of Allegretti provides an opportunity for this Court to help describe how the *Penn-Central* factors should be analyzed and applied in a setting where there is a final decision by the California courts and the issues raised are both factually and legally ripe for review.

The *San Remo Hotel v. City of San Francisco* (2005) 545 U.S. 323, is also of considerable import as to why Allegretti's Certiorari Petition should be granted. The *San Remo Hotel* case dealt with the procedural question of how and when takings claims may properly be filed in Federal Court by property owners. The practical impact of that decision is that cases that raise Fifth Amendment taking claims are now being filed and determined in State Courts more than ever before. That reality means that state Supreme Courts and intermediate appellate courts through-out the country need guidance from this Court on the taking issues raised in Allegretti's Certiorari Petition.

CONCLUSION

For the reasons set forth above, WMA would respectfully submit that this Court should grant the Certiorari Petition filed by Allegretti & Company. The Fifth/Fourteenth Amendment takings claims in the underlying case raise issues which are ripe and do not depend at all on the water law issues that also exist in the *Allegretti v. Imperial County* dispute.

Respectfully submitted,

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